IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 784 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
VAJUBHAI PANCHABHAI PATEL - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 30.03.1996 passed by the learned Chief Judicial Magistrate, Amreli in Criminal Case No. 1422 of 1993 whereby, the respondent was acquitted of the alleged offences punishable u/s. 279, 337, 338 & 304-A of the Indian Penal Code and Sections 177 & 184 of

the Motor Vehicles Act.

2.0 The brief facts of the prosecution case are as under;

2.1 On 06.10.1993, at around 1430 hrs., while the respondent – accused and three other persons were returning to their village after attending a social function in an auto-rickshaw bearing registration No. GTA-7102 driven by the respondent herein, it turned turtle and fell into a nearby canal. As a result of the said incident, all the four persons suffered severe bodily injuries and they were taken to the Hospital for necessary medical treatment. However, during the course of treatment, one Vinubhai Vallabhbhai succumbed to the injuries.

2.2 Therefore, a complaint for offences punishable u/s. 279, 337, 338 & 304-A of the Indian Penal Code and Sections 177 & 184 of the Motor Vehicles Act was filed against the respondent. Investigation was carried out and at the end of investigation charge-sheet was filed against the respondent before the Court of learned C.J.M., Amreli. Trial was initiated and at the end of trial, the learned C.J.M. acquitted the respondent of the offences alleged against him. Being aggrieved by the said judgment and order passed by the trial Court, the appellant – State has approached this Court by way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court

against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 In the impugned order, the trial Court has recorded a finding of fact that there is no evidence on record pointing towards the guilt of the respondent or, in that matter, to show that the incident in question took place on account of the rash & negligent driving by the respondent. From the record, it appears that the accident took place as the road in question had a sharp turn near the end of the canal bridge and since at both sides of the said road near the turn there was dense bush at the relevant point of time, the driver of any vehicle, ordinarily, would not be in a position to view the road beyond the said turn clearly. The said fact has also been admitted by the Investigating Officer in his evidence before the Court below.

5.0 Moreover, from the evidence of the 'panch' witness of the scene of offence, it is established that the break in the said vehicle had failed at the relevant point of time. Thus, in such circumstance, it would have been very difficult to the respondent to control the vehicle in question more particularly, when the road was not in a suitable drivable condition as discussed hereinabove.

6.0 Considering the facts and circumstances of the case, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the offences alleged against them. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement

with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with the reasons given by the Court, the decision of which is under appeal, will ordinarily suffice."

7.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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